No. 90-8466

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

DAVID E. RIGGINS,
Petitioner,

v.

THE STATE OF NEVADA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEVADA SUPREME COURT

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICUS CURIAE

Amicus, Nevada Attorneys for Criminal Justice, is a non-profit, voluntary association of those individuals, mainly criminal defense attorneys, who have an interest in the fair administration of justice in the country in general, and Nevada in particular. Amicus has approximately 150 members. Amicus presents this brief in support of the Petitiner for the Court's consideration.

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ISSUE PRESENTED

Amicus submits that the narrow issue presented by the Writ herein, apparently one of first impression for this Court, is whether the Petitioner was denied his rights under the due process clause of the Fifth Amendment and the right to a fair trial under the Sixth Amendment by forced medication during trial which prevented Petitioner from allowing the jury to view the Petitioner's true mental state.

The question is whether the Petitioner was unconstitutionally prevented from presenting evidence particularly relevant to his insanity defense- his own mental condition in its unaltered state.

ARGUMENT

There would seem to be no principle more basic, no consideration more paramount, then a criminal defendant's right to present a defense unfettered by unnecessary interference by the State. Here, all the Petitioner requested was that he be left undrugged by the State so that he could best present his only available defense- his own insanity at the time of the crime. It was the Petitioner's belief, aided by counsel, that the best presentation of his defense was the jury's ability to view his mental condition unmasked by 800 milligrams per day of Melliril, the maximum recommended daily dosage of that psychotropic drug.

The State, without any showing of need, in fact without any need whatsoever, deprived the Petitioner of his rights to present his insanity defense in the manner thought best by the Petitioner and his counsel. As such, the Petitioner's right to a fair trial, to present a defense, and to follow the advice of his counsel, were denied.

Amicus asserts that a criminal defendant has at least the right to refuse psychotropic drugging during the limited period during which the defendant is actually being tried before a jury. Amicus proposes that the proper course is for the trial court to determine whether a defendant has made an informed choice to forego medication during trial. If the trial court determines that such an informed choice has been made, then the defendant will be allowed to avoid the effects of medication during the trial period. If competency is

threatened by the avoidance of medication, the defendant will be considered to have waived his right to be tried while fully competent. The defendant will have traded that right for the ability to present his or her insanity defense.

Under this process, there is no State interest threatened. Trial will not be delayed or avoided because of the defendant's choice to proceed unmedicated. And the defendant's right to present a defense will be retained.

I. A CAPITAL DEFENDANT HAS A FUNDAMENTAL CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE IN BOTH THE GUILT AND PENALTY PHASES OF THE TRIAL UNFETTERED BY ARBITRARY STATE ACTION.

This Court has consistently respected and enforced a criminal defendant's right to have a fair opportunity to present a defense on his own behalf. The Court emphasized the right to present a defense in Washington v. State of Texas, 388 U.S. 14, 18-19, 87 S.Ct. 1920, 1923, 18 L.Ed.2d 1019 (1967).

> This Court had occasion in In re Oliver, 333 U.S. 257, 68 S.Ct. 499, 91 L.Ed.2d 682 (1948), to describe what it regarded as the most basic ingredients of due process of law. It observed that:
>
> "A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense- a

> right to his day in court- are basic in our system of jurisdiction; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel." (Citations omitted)

This Court plainly stated in Chambers v. Mississippi, 410 U.S. 284, 302, 93 S.Ct. 1038, 1049, 35 L.Ed.2d 297 (1973) that "[f]ew rights are more fundamental than that of an accused to present witnesses in his own defense."[1]

> We conclude that the exclusion of this critical evidence, coupled with the State's refusal to permit Chambers to cross-examine McDonald, denied him a trial in accord with traditional and fundamental standards of due process. In reaching this judgment, we establish no new principles of constitutional law. ... Rather, we hold quite simply that under the facts and circumstances of this case the rulings of the trial court deprived Chambers of a fair trial. Id.

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[1]Chief Justice Rehnquist's concern regarding "constitutionalization of the intricacies of the common law of evidence" Chambers, supra, 410 U.S. 308, 93 S.Ct. 1052 (Rehnquist, J. dissenting) is not implicated under the facts at bar. Fundamental constitutional due process concerns, not rules of evidence, are impacted by the State's actions here.

A full and fair presentation of evidence is particularly critical in a capital case where the defendant's life hangs in the balance. This Court has repeatedly underscored the principle that a capital defendant has the right to present **any** evidence in mitigation during the penalty phase of the case.

> There is no disputing that this Court's decision in Eddings requires that in capital cases "'the sentencer ... not be precluded from considering, *as a mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.'" (Emphasis in original) Skipper v. South Carolina, 476 U.S. 1, 4, 106 S.Ct. 1669, 90 L.Ed.2d 1, 6 (1986).

The State simply cannot preclude the capital defendant from presenting relevant evidence either as to his guilt or the appropriateness of the death sentence. In the analogous case of Ford v. Wainwright, 477 U.S. 399, 106 S.ct. 2595, 91 L.Ed.2d 335 (1986), this Court reversed and remanded a capital case where the Court found that the State's procedures for determining the sanity of the capital defendant were not sufficient to satisfy constitutional considerations.

> The first deficiency in Florida's procedure lies in its failure to include the prisoner

in the truth-seeking process. Notwithstanding this Court's longstanding pronouncement that "[t]he fundamental requirement of due process of law is the opportunity to be heard," ... state practice does not permit any material relevant to the ultimate decision to be submitted on behalf of the prisoner facing execution. In all other proceedings leading to the execution of an accused, we have said that the factfinder must "have before it all possible relevant information about the individual defendant whose fate it must determine." (Citations omitted) Id., 447 U.S. 413, 106 S.Ct. 2604.

In Ford, the capital defendant's fundamental rights were abridged by the State's refusal to allow evidence to be presented during the determination of the defendant's post-trial sanity. Here, the State prevented the Petitioner from presenting his own demeanor and mental condition during the guilt and penalty phases of his capital trial. Amicus asserts that this action violated the Petitioner's right to present a defense.

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II. FORCED MEDICATION WITH PSYCHOTROPIC DRUGS DURING TRIAL DENIES A CRIMINAL DEFENDANT WHO IS PROFFERING AN INSANITY DEFENSE THE RIGHT TO PRESENT CRITICAL EVIDENCE ON HIS BEHALF.

This Court has held in a variety of circumstances that in determining "whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance 'the liberty of the individual' and 'the demands of an organized society.'" Youngberg v. Romeo, 457 U.S. 307, 320, 102 S.Ct. 2452, 2460, 73 L.Ed.2d 28 (1982); *see also* Jackson v. Indiana, 406 U.S. 715, 728, 92 S.Ct. 1845, 1858, 32 L.Ed.2d 435 (1972). Amicus asserts that the State has no compelling interest, in fact no rational interest, in denying a capital defendant the right to present critical insanity evidence at the guilt and penalty phases of his trial. The defendant's interest, on the other hand, is evident. It is the hope that he will not be killed by the State.

The precise issue presented here was addressed in a thoughtful law review article published in Fentiman, *Whose Right Is It Anyway?: Rethinking Competency to Stand Trial in Light of the Synthetically Sane Insanity Defendant*, 40 U.Miami L.Rev. 1109 (1986).[2]

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[2]Since the author of the Article has stated Amicus' position far better than Amicus can, we adopt whole clothe many of the principles expressed in that article.

In a small but significant group of cases such as this one, the defendant's constitutional right not to incriminate himself, to present a defense to a criminal charge, and to privacy are on an apparent collision course with the constitutional prohibition against the trial of incompetent defendants. Where the defendant is a mentally ill individual who may only be restored to competency through the use of psychotropic drugs, the very fact of this pharmaceutical restoration may significantly undercut his primary defense- that he was insane at the time of the offense. The defendant's "synthetic sanity," achieved through the taking of antipsychotics or other psychoactive drugs, precludes the jury from seeing the defendant as he was at the time of the crime, the moment for which the jury's assessment of his mental state is critical. Id. at 1111.

The Fentiman article concluded, *inter alia*, that the forced medication of a defendant who is attempting to present an insanity defense violates the defendant's Due Process right to present a defense.

> The result of the compelled administration of antipsychotic drugs, with its elimination of overt symptoms of serious mental illness and the concomitant

> presence of misleading and distracting side effects, is that the jury is presented with a totally false picture of the defendant's mental processes. The use of psychotropic drugs precludes the jury from catching even a glimpse of the defendant's true mental state. Id. at 1130.

As recognized in the Fentiman article, forced medication deprives the defendant of the best evidence available to prove his defense- his own mental condition. And, as argued below, the defendant is deprived of this evidence without need- compelling or otherwise. If appropriate procedures are followed, the defendant can be allowed to properly present a defense and the State will be allowed to proceed with the desired prosecution.

A number of State courts have addressed the issue presented here. The cases are divided into those that have found the defendant's right to present his mental demeanor at trial to be paramount and those who have found that the State's right to proceed with prosecution of an incompetent defendant should control. While Amicus asserts, as set forth below, that this is an illusionary conflict, the cases are instructive on the debate that has occurred in the States that have addressed the issue.

The cases that have denied the defendant a right to be tried in an unmedicated state have found the State's interest in proceeding with trial is the paramount concern. In State v. Law, 244 S.E.2d 302, 307 (SC 1978), the South

Carolina Supreme Court held that the State's right to trial outweighed the defendant's claimed absolute right to "bodily integrity". The court held that "[i]t is our view that such an absolute right does not exist. It is our view that medication may be administered without the consent of a defendant under compelling circumstances, including those where medication is necessary to render a defendant competent to stand trial." Id. at 307. The basis for the court's holding was its concern that an incompetent defendant could not be tried and that the State's interest in proceeding with trial constituted a compelling reason for the forced medication.

Similarly, the court in People v. Hardesty, 362 N.W.2d 787 (Mich.App.1984) also found that the State's interest in proceeding with prosecution outweighed the defendant's interest in avoiding forced medication.

> In our case the medication allowed the state to bring defendant to trial so that his culpability and criminal responsibility could be adjudicated. Additionally, the record clearly demonstrates that the drugs used enhanced, rather than diminished, defendant's ability to engage in rational thought and assist counsel at trial. This being the case, the balance of competing interests favors the state .... Id. at 793.

In State v. Jojola, 553 P.2d 1296 (CA NM 1976), forced medication was upheld on

two grounds. First, the court found that there was no evidence that the "defendant's thought processes or the contents of defendant's thoughts were affected by the Thorazine ...". Id. at 1299. Secondly, the court found that the argument that the defendant' Due Process rights were violated by depriving him of the right to demonstrate his unmedicated demeanor was not supported by the record. The court found that the theory originally raised by the defendant that would have made relevant his demeanor was not pursued at trial. Id.

Finally, the court in State v. Lover, 707 P.2d 1351 (Wash.App. 1985) considered the State's right to proceed to trial to outweigh the defendant's right to refuse forced medication as long as the effect of the medication could be explained to the jury.

> The compelling interest here, as in *Law* and *Jojola*, is the State's interest in bringing an accused to trial, an interest the *Maryott* court recognized as "fundamental to a scheme of ordered liberty." ... No less intrusive method of achieving this goal has been suggested by the defendant. Id. at 1354.

The common principle highlighted in the above cases that have approved the forced medication of the defendant is that the State's interest in proceeding with the prosecution of a criminal defendant outweighs the defendant's right to refuse psychotropic drugs, at least where no alternative procedure, short of avoiding

trial, has been suggested.

The cases where forced medication has been disapproved have focused on the prejudicial effect to the defendant's ability to present the jury with his or her true unmedicated demeanor. The court in State v. Murphy, 355 P.2d 323 (Wash. 1960)(*En Banc*) held that the defendant in a capital case was entitled to a new trial where the forced medication altered the defendant's demeanor at trial.

> Yet, as a practical, common-sense matter, it can hardly be denied that in a case such as this, where the defendant appears and admits committing the criminal acts charged, constituting first degree murder, a significant consideration in the minds of the members of the jury respecting the penalty to be imposed may well be their evaluation of defendant's attitude in regard to the crime he has committed. Id. at 326.

Similarly, the court in State v. Maryott, 492 P.2d 239 (CA1 Wash. 1971) found that the defendant had an interest in presenting his demeanor as evidence at trial and that the State had no counter-balancing interest.

> When mental competence is at issue, the right to offer testimony involves more than mere verbalization. The demeanor in court of one who has raised the issue of his sanity is of

probative value to the trier of fact. ...

> In the instant case, it is difficult to see a legitimate state interest in imposing drugs on a defendant who asks to be free of them. If the motive is to control a possibly obstreperous defendant, two conclusions are suggested, analogously, by the reasoning in *Allen*. First, no control should be imposed until its need has been demonstrated. Second, the control which is imposed should insure an orderly trial with the least interference with a defendant's rights. Id. at 242, 243.

In In re Pray, 336 A.2d 174 (Vermont 1975), the defendant's murder conviction was reversed based upon the fact that the jury had not been informed that the defendant was under heavy medication at trial. The Vermont Supreme Court recognized the importance of the defendant's demeanor during trial.

> The more serious question, in the situation of this case, is the impact of a heavily sedated defendant upon the jury's evaluation. ...
>
> In other words, the jury never looked upon an unaltered, undruged Gary Pray at any time during the trial. Yet his deportment, demeanor, and day-to-

> day behavior during that trial, before their eyes, was a part of the basis of their judgment with respect to the kind of person he really was, and the justiciability of his defense of insanity. Id. at 177.

Certainly, a case where the jury was not apprised of the forced medication of the defendant presents a more serious violation of due process than the case at bar. However, Amicus asserts that merely apprising the jury of the medication cannot cure the due process violation in the absence of any compelling State interest in forcing the medication upon a defendant.

The court in Com. v. Louraine, 453 N.E.2d 437 (Mass.1983) also reversed a first degree murder conviction where the defendant was forcibly medicated during trial. The court held that the defendant's demeanor was critical evidence and that the presentation of expert testimony regarding the effects of the medication would not cure the constitutional violation.

> In a case where an insanity defense is raised, the jury are likely to assess the weight of the various pieces before them with reference to the defendant's demeanor. Further, if the defendant appears calm and controlled at trial, the jury may well discount any testimony that the defendant lacked, at the time of the crime, substantial capacity either to appreciate the wrongfulness of his conduct or to

> conform his conduct to the requirements of the law. ...
>
> The ability to present expert testimony describing the effect of medication is not an adequate substitute. At best, such testimony would serve only to mitigate the unfair prejudice which may accrue to the defendant as a consequence of his controlled outward appearance. It cannot compensate for the positive value to the defendant's case of his own demeanor. Id. at 442.

The Louraine court also noted that if the State were allowed to forcibly medicate the defendant during trial, the State would thus have the ability "'to determine what the jury will see or not see of the defendant's case by medically altering the attitude, appearance and demeanor of the defendant ...'" Id.

Amicus asserts that it is uncontroverted that a defendant's demeanor at trial is of critical relevance where the sanity of the defendant is in issue. Furthermore, the substitution of an expert's sterile testimony regarding what the defendant's demeanor would be, absent forced medication, cannot substitute for the jury's view of an unmedicated defendant.

> It can therefore be inferred that when an insanity defendant with a history of schizophrenia and psychotropic drug treatment appears, due to such treatment,

to be calm, in control, and capable of understanding the proceedings against him, a jury may be strongly inclined to ignore the expert witness's assessment of psychiatric impairment. Such a jury will be much more likely to find the defendant guilty, rather than acquitting him on grounds of insanity. Instead of seeing a violent, extremely disturbed individual, careening out of control because of his normal thought processes, the jury may easily perceive the defendant as a "calculating, merciless criminal," unmoved by trial testimony relating to the grotesque and terrifying conduct in which he is alleged to have engaged. Fentiman, *supra*, at 1131.

Amicus asserts that where the State's interest in proceeding to trial is protected, preventing a defendant from presenting his true unmedicated demeanor at that trial violates the Constitution and mandates reversal.

III. A DEFENDANT HAS THE RIGHT TO WAIVE HIS RIGHT TO BE COMPETENT TO STAND TRIAL IN ORDER TO PROPERLY EFFECT HIS DECISION TO PRESENT AN INSANITY DEFENSE.

Although the historical underpinnings of the prohibition against trial and punishment of a mentally incompetent defendant are somewhat vague, American

courts have uniformly recognized that principle. Ford v. Wainwright, *supra*, at 477 U.S. at 401, 408-409, 106 S.Ct. at 2597, 2601. The State should not be allowed, however, to use the defendant's constitutional shield against being tried while incompetent as a sword with which to prevent the presentation of exculpatory evidence by the defendant. Should the defendant make a valid waiver of his right not to be tried while incompetent, the only State interest then being impacted would be an interest in having a strategic advantage at trial. This is, presumably, not such an interest that will be recognized as justifying the deprivation of the defendant's right to fairly present his or her defense.

While Amicus certainly agrees with the general principle that incompetent individuals should not be subjected to criminal prosecution but should rather be provided humane medical assistance, adherence to that principle does not contraindicate exception when necessary to protect the defendant from greater a harm. The case at bar best illustrate's the reason for the exception. Here, the State of Nevada is aggressively attempting to bring about the Petitioner's death. They have succeeded in accomplishing that goal to date- the Petitioner sits on death row. In order to avoid his death, the Petitioner sought to present a defense- his insanity. The State prevented the proper presentation of that defense by forcing the Petitioner to accept each day during trial the maximum recommended dosage of a strong psychotropic drug. This was done without apparent inquiry into whether the State had any

proper interest in forcing the Petitioner to be drugged.

Certainly, the State has no recognizable interest in requiring a defendant to assert the right to be competent during trial. Should the defendant decide, with the advice of counsel, to waive that right, that trial strategy decision does not impact the State at all. Additionally, the State can hardly be heard to seriously suggest that the desire to force psychotropic medication on a defendant is done with the defendant's best medical interests in mind. Here, the State is seeking to kill the Petitioner. The Petitioner should have the right to decline any supposed humanitarian concerns for his well-being in the interim before his execution if that decision is made in order to safeguard the right to a fair trial.

Simply put, allowing a defendant to waive his right to be competent at trial avoids any conflict between the State's right to a trial and the defendant's right to present a defense. The solution suggested here has been noted in at least two of the cases that have addressed the issue, Louraine, *supra*, at 444, fn. 13, State v. Hayes, 389 A.2d 1379, 1382 (1978), as well as the commentary by Professor Fentiman.

This Court has long recognized the ability of a defendant to waive various constitutional rights implicated in criminal prosecutions. The defendant may waive the privilege against self-incrimination, Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the right to

counsel, Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), the right to be present at trial, Taylor v. United States, 414 U.S. 17, 94 S.Ct. 194, 38 L.Ed.2d 174 (1973), and numerous other privileges considered to be foundational rights. Therefore, there seems to be no principled reason why the Petitioner should not have been allowed to waive his right to be competent during trial, if indeed that would have been the result of termination of medication, if that decision was made in consultation with his counsel and for the purpose of presenting his insanity defense. *See* Fentiman, *supra*, at 1157.

The process that has been suggested would protect all interests implicated in the decision to avoid forced medication. The defendant would be medicated prior to trial so as to allow the defendant to assist counsel and make a rational and informed decision to forego medication. The trial court would then, upon the defendant's request, conduct a hearing into whether the defendant's decision to terminate forced medication was knowingly and intelligently made. If the trial court determined that the decision was competently made, medication would be halted sufficiently prior to trial so as to ensure that the defendant would appear before the jury in his or her true mental state.

> Such a defendant would be acting in accordance with the essential purposes of the incompetency prohibition. He would be able to function as a defendant in terms of active and comprehending pretrial preparation, and he

> would be able to understand why he was charged and why he might be punished. He would be able to recall pertinent facts, identify potential witnesses, and discuss with his attorney alternative trial strategies. As a result, the defendant would be able to persuasively mount the best defense available to him- that he was insane at the time of the offense. Fentiman, *supra*, at 1159.

This procedure would seem to avoid all constitutional pitfalls. The defendant is able to present an adequate defense and the State is able to proceed with trial. As opposed to simply denying the defendant the right to present his or her only defense, this procedure would seem to protect the rights of all involved. Petitioner asserts that this is the procedure that should have been followed below.

IV. THE DEPRIVATION OF THE PETITIONER'S FUNDAMENTAL DUE PROCESS RIGHT TO PRESENT A DEFENSE CANNOT BE CONSIDERED HARMLESS ERROR.

The court has generally allowed resort to harmless error analysis where it can be shown beyond a reasonable doubt that the constitutional error did not contribute to the verdict. Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 830, 17 L.Ed.2d 705 (1967). The Court has allowed harmless error analysis, even in capital cases, where the error complained of was discrete in nature. Satterwhite v. Texas, 486 U.S. 249,

256, 108 S.Ct. 1792, 100 L.Ed.2d 284 (1988). "Some constitutional violations, however, by their very nature cast so much doubt on the fairness of the trial process that, as a matter of law, they can never be considered harmless." Id., 486 U.S. 256, 108 S.Ct. 1797; Gray v. Mississippi, 481 U.S. 648, 668, 107 S.Ct. 2045, 2049, 97 L.Ed.2d 622 (1987). Amicus asserts that the error at bar cannot, as a matter of law, be considered harmless error.

Deprivation of a defendant's right to present his defense, free from unnecessary interference by the State, "goes to the very integrity of the legal system." Gray, 481 U.S. at 668, 107 S.Ct. at 2049. There can be nothing more fundamental. As such, harmless error analysis should not be utilized.

V. EVEN IF THE COURT UTILIZES A HARMLESS ERROR STANDARD FOR THE DEPRIVATION OF THE FOUNDATIONAL RIGHT OF A DEFENDANT TO PRESENT A DEFENSE, IT CANNOT BE SAID THAT THE REFUSAL TO ALLOW THE DEFENDANT TO PRESENT TO THE JURY HIS OWN MENTAL STATE AS EVIDENCE IN AN INSANITY DEFENSE TRIAL IS HARMLESS ERROR.

Even if the Court does resort to the harmless error analysis in cases, such as this, where the defendant has been deprived by the State of the opportunity to present an adequate defense, Amicus asserts that such error cannot be considered harmless under the facts at bar. Even the State cases that have held that a defendant's rights were not fatally violated

through forced medication have recognized that the defendant's demeanor is relevant in an insanity defense trial.

Under Chapman, 386 U.S. at 23, 87 S.Ct. at 827-828, the State is required to prove beyond a reasonable doubt that the forced medication did not contribute to the Petitioner's conviction or the sentence of death. Petitioner asserts that such a showing is not possible in a case where the Petitioner's demeanor was so relevant and that demeanor was artificially altered by the State. It would seem a rare case indeed where the State asserts that medication of a defendant is necessary in order to make him or her competent to stand trial yet the unmedicated demeanor of the defendant would have no effect on a jury's determination of the sanity question.

V. CONCLUSION

Amicus asserts that this case does not have to involve a constitutional conflict between the Petitioner's due process right to present his defense and the State's right to prosecute. Once it is acknowledged that the Petitioner may waive his right to be competent at trial, if in fact the termination of medication will lead to incompetence, then all constitutional friction disappears.

Amicus further asserts that any error which leads to the deprivation of the Petitioner's right to present a defense is fundamental and should not be considered under the harmless error analysis. However, if the harmless error rule is applied, it cannot be said that deprivation of the

Petitioner's ability to present his unmedicated demeanor in support of his insanity defense is harmless beyond a doubt.

Amicus respectfully urges this Court to hold that a defendant has the right to waive competency at trial in order to present his or her insanity defense. Amicus further urges this Court to hold that the harmless error rule has no place when considerations of such foundational importance are involved.

Amicus urges reversal of the case at bar.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that I an am employee of KEVIN M. KELLY, LTD. and that I am not a party to nor interested in the within action; on the 18 day of November, 1991, I deposited three (3) true and correct copies of the BRIEF OF AMICUS CURIAE in the United States mails, first class postage prepaid thereon, addressed to the following:

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